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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JUAN MANUEL NAVARRO, Defendant and Appellant.	E055421 (Super.Ct.No. FSB00444) OPINION

APPEAL from the Superior Court of San Bernardino County. Kyle S. Brodie, Judge. Affirmed as modified.

Tracy A. Rogers, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting, Andrew Mestman and Laura A. Glennon, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Juan Manuel Navarro of first degree murder (count 1—Pen. Code § 187, subd. (a))[1] and found true an allegation he personally used a firearm in his commission of the offense (§ 12022.5, subd. (a)).[2] The court sentenced defendant to prison for an indeterminate term of 25 years to life for the murder, followed by a consecutive five-year term for the personal use allegation. The court awarded defendant a total of 952 days of custody credits consisting of 714 actual and 238 conduct days.

On appeal, defendant contends the court committed prejudicial error in allowing admission of several purported hearsay statements, in failing to adequately investigate an allegation of misinterpretation by defendant's Spanish interpreter, in denying defendant's motion for a mistrial, and in failing to award him an additional 118 days of custody credit to which he was entitled. Finally, defendant contends the cumulative effect of the trial court's errors resulted in a denial of due process. The People concede the custody credit issue and we shall direct the trial court to award defendant the additional 118 days of custody credits. In all other respects, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Defendant and the victim met in high school when they were both 16 years of age. At some point soon thereafter, they became intimate and the victim became pregnant. Over the course of the next several years, they had three children together. In 1992, the

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] At the close of evidence, the court granted defendant's section 1118.1 motion as to the charged count 2 offense of kidnapping his son. (§ 207, subd. (a).)

victim and children were living with defendant in San Bernardino. In December 1992, the victim and defendant broke up; the victim and her children moved in with the victim's parents.

After the breakup, defendant "became very jealous, aggressive, [and] violent[.]" Sometime in January 1993, the victim and her sister, Maria Murillo, were driving to the store; Murillo testified she noticed defendant driving two car lengths behind them. Around the same time, defendant told the victim in front of Murillo that if he ever found or heard that she was with another man he would kill them both. Murillo testified that if defendant did not know where the victim was "he would become very desperate and jealous and angry."

Defendant's sister, Maria Hernandez, testified that before defendant and the victim broke up, defendant told her he was jealous of a neighbor who he believed was getting too close to the victim. Defendant told Hernandez he was going to kill the victim. After they broke up, he said something to the effect of, "'If I can't have her, no one could have her.'" Hernandez believed defendant wanted to get back together with the victim. Defendant also told Hernandez he was going to kill Hernandez's "sister-in-law, Michelle," because he believed she "was influencing [the victim] not to get back together with [defendant]." Gerardo Martinez, a friend of defendant's, testified defendant told him he believed the victim was seeing another man. Defendant was "pretty jealous."

On February 14, 1993, the victim, her children, and Murillo were at a friend's apartment; they planned to go to the swap meet. At around 8:00 a.m., defendant knocked

on the door and was let in by one of the children.[3] The victim woke up, asked defendant what he was doing there, and requested he leave. Defendant refused. The victim showed him a restraining order she had obtained and informed him he was required to stay away from her. Defendant replied, "no piece of paper was going to keep him away from her."

The victim grabbed the phone in an attempt to call the police, but defendant took the phone from her.[4] Defendant remained at the apartment for four hours. He asked the victim when she was going home; she said she did not know. He begged her to come back to him.

Around 12:00 p.m., the victim, her children, and Murillo left for the swap meet. Martinez testified that around that time he received a phone call from defendant, who said he would be late to a party he had planned on attending that day. Defendant said "'The party's over.'" The statement caused Martinez concern; he thought something was wrong with defendant. Defendant told him "to say good-bye to all of his friends." Defendant sounded sad. Martinez informed police he believed defendant might be considering doing something drastic to himself, but he did not believe defendant would kill himself.[5]

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[3] Murillo testified this, and the subsequent events at the apartment and swap meet, occurred on February 12, 1993, rather than on February 14, 1993.

[4] Defendant testified he merely told her not to call the police; he did not actually handle the phone. The victim put the phone back down on her own.

[5] Martinez's statements to the police were made after the victim was killed.

Murillo later noticed defendant at the swap meet about 50 feet behind them. She testified they had not told him where they were going; he had followed them.[6] Defendant approached the victim at the swap meet, but she did not want him there. He followed her around for about an hour. He left the swap meet when they left. Defendant followed them uninvited back to the victim's friend's apartment.

At the apartment, the victim said she was going to take her youngest child to the doctor because he had an earache. Defendant said he would follow her to the hospital. The victim left with her son; defendant left separately. The victim brought her then four-year-old son to Loma Linda University Medical Center's (LLUMC) emergency room. The registration clerk at LLUMC testified the victim appeared "very nervous and looking over her shoulder, constantly."

Bradford Montgomery testified that on February 14, 1993, he was working on non-emergency transportation and arrived at LLUMC at around 3:00 p.m. He noticed defendant and the victim leaving the emergency room with a small child. The victim "was sobbing and crying." Defendant was talking to her in an aggressive manner. Montgomery noticed them scuffling. The victim placed the child into the car and got in herself. Defendant pulled her out of the car. He produced a handgun and shot her.

Defendant took "the [victim] out of [the] truck, place[d] his left hand on the back of her neck, push[ed] her down in a downward motion, [took] out the handgun, and fired three shots, bang, bang, bang. At that point, [defendant took] the child and they r[a]n[.]"

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[6] Defendant also testified he followed them, but contradictorily also testified he left the apartment to go obtain a gun from a friend before he went to the swap meet.

Defendant took the child, got into his car, and left the parking lot. Montgomery attempted to follow, but after a short period defendant accelerated so quickly Montgomery stopped and returned to the emergency room parking lot.

The victim's son failed to appear at trial after being subpoenaed by the People. His preliminary testimony was read into the record. The victim's son testified that when he was four years old, on February 14, 1993, around 2:00 p.m., his mother brought him to the hospital. As they left the hospital walking towards their vehicle, defendant, his father, started arguing with the victim. He got into the truck; his mother told him to lock the door. He then witnessed defendant shoot his mother with a large semiautomatic, silver handgun. Defendant then grabbed his hand and pulled him to defendant's vehicle.

Defendant drove off and stopped at a restaurant where he made a phone call. They were then picked up by some other people in another car. While they were driving, the victim's son saw defendant give the gun to the driver, who put it in the glove compartment. He was taken to a ranch where he stayed for a while. He never saw defendant after he was dropped off at the ranch until after defendant was charged. He never spoke to defendant again after the shooting. At some point in time, a man from the ranch took him to his paternal grandmother's apartment.

Hernandez testified that on March 3, 1993, she was living with her mother. There was a knock on the door. They found the victim's son alone. They brought him inside and called the police.

Thomas O'Callaghan, a general surgeon at LLUMC, was on call that evening. He was called in to assist with a woman with multiple gunshot wounds. He pronounced her

dead at 3:43 p.m. The forensic pathologist who conducted the victim's autopsy testified he found three gunshot entry wounds to the victim's body. Two of the entry wounds were to the victim's head; both left soot, which indicated the gun's muzzle was in contact with the victim's head when fired. A third bullet entry wound to the abdomen also left soot. Bullet fragments were found in the victim's body. She died within minutes of being shot. The victim's cause of death was multiple gunshot wounds. The manner of death listed on the death certificate was homicide.

San Bernardino County Sheriff's Deputy John Gitner testified he was assigned to the homicide division in 1993. He was dispatched to LLUMC at 3:19 p.m. on February 14, 1993, in relation to a homicide investigation. At the scene of the shooting he found several cartridge casings, two fired bullets, and blood and brain matter. A partial lead bullet and copper jacket were recovered from the victim's skull. Gitner produced "wanted" posters in Spanish and English, which were distributed both in America and Mexico; defendant was a Mexican National. Gitner also appeared on America's Most Wanted in relation to the homicide.

FBI agent Mark Enyeart assisted in the extradition of defendant once it was suspected he had fled to Mexico. Enyeart took defendant into custody on September 30, 2010, at Los Angeles International Airport after defendant was transported there from Mexico City.

Defendant testified he did not stalk or spy on the victim, but would stop by or follow her. When the victim waved a document in front of him and told him he could not be around her, he did tell her, "even if you had that paper I'm going to continue seeing

you." However, he testified he had never seen the restraining order and was unable to read English. When the victim told him she did not want him to go with them to the swap meet, he decided to kill himself.

He went to obtain a gun, but did not kill himself immediately because he planned to kill himself in front of the victim. When he met her in the parking lot of LLUMC, she told him he should not be there, that she was always unfaithful to him, and that the children might not be his. Defendant had the gun in his pocket; he pulled it out and shot her. He never planned on shooting her. He did not remember how many times he fired the gun, and did not believe she had died. Defendant did not thereafter kill himself because he did not want to leave his son alone.

Defendant grabbed his son, drove off, called a friend, and the friend brought him and his son to a workers' ranch. He stayed with his son at the ranch for about a week and a half. He obtained some money from a friend who helped him leave the country. A friend brought his son to defendant's mother's house.

Defendant married another woman in Mexico, had a son with her, and started his own construction business. He never thereafter attempted to have any contact with his children in America.

DISCUSSION

A. ADMISSION OF PURPORTED HEARSAY STATEMENTS

Defendant contends the court's admission of four out-of-court statements by the victim constituted prejudicial error, which compromised his defense that he acted in the

heat of passion rather than with premeditation and deliberation. We hold any error harmless.

1. *FACTS*

On November 4, 2011, the People filed a motion in limine seeking admissibility of various statements made by the victim to others. As pertinent to the issues raised by defendant, the People sought admission of statements made by the victim that defendant had kicked her out of their home; that after Christmas 1992, defendant told her he wanted her back; that the victim had told defendant she did not want to see him anymore; and that defendant would follow her around and spy on her. The People argued defendant's acts were relevant to prove motive pursuant to Evidence Code section 1101, subdivision (b). They additionally contended the statements were admissible under the "state of mind" exception to the rule against hearsay evidence pursuant to Evidence Code section 1205, subdivision (a), or that they were circumstantial nonhearsay evidence of the victim's state of mind not offered for the truth of the matters therein asserted.

Defendant responded by trial brief that all the statements were inadmissible hearsay evidence. The trial court held an Evidence Code section 402 hearing on the admissibility of the statements. The court reserved ruling on the matter for the next hearing. At the next hearing, the court tentatively ruled it would allow admission of the statements. Prior to opening arguments, the court stated, "I haven't granted a motion to exclude" the statements. After opening arguments, the court ruled the victim's statements were admissible under the state of mind exception to the rule against hearsay evidence. It would allow admission of the statements concurrent with a limiting

instruction to the jury that they were relevant only as to the victim's state of mind and could not be considered for the truth of the matters asserted.

At trial, Murillo testified the victim told her defendant had kicked her out of their home. The trial court then gave the jury the following limiting instruction: "I'm going to give you [the] first of what may be several limiting instructions, is what they call it. A limiting instruction is direction from me that limits the way that you can consider certain evidence. . . . Here's what the instruction is, in this context, you heard this witness testify that . . . [the victim] said that it was the defendant's idea to end the relationship . . . . You are only to consider that evidence for a limited purpose, namely, to consider that evidence as evidence of . . . [Murillo's] sister[']s state of mind. [¶] You are not to consider the evidence as—for the truth of the matter that's in the statements. In other words, you are not to consider the evidence as proof that, in fact, the defendant wanted to end the relationship. You . . . may, if you wish, consider the evidence, if at all, only for the limited purpose of evaluating [Murillo's] sister's state of mind."

Murillo later testified that after Christmas 1992, the victim told her defendant wanted the victim back. Defense counsel objected on the ground the statement constituted inadmissible hearsay evidence. The court overruled the objection, referring the jury back to its previous limiting instruction. Murillo thereafter testified the victim told her the victim had informed defendant that the victim did not wish to see defendant any more. The court informed the jury, "the same limiting instruction would apply." Hernandez subsequently testified the victim told her defendant would follow the victim around and spy on her. Defense counsel objected; the court ruled, "I will sustain that

objection and instruct the jury that [the victim's] statements as testified to by this witness should only be considered by the jury, if at all . . . as evidence bearing on [the victim's] state of mind. It's not as—not as evidence that the Defendant was, in fact, stalking her."

2. *ANALYSIS*

"On appeal, 'an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence, including one that turns on the hearsay nature of the evidence in question.' [Citations.]" (*People v. Hovarter* (2008) 44 Cal.4th 983, 1007-1008; *People v. Martinez* (2000) 22 Cal.4th 106, 120.) Error in the admission of hearsay evidence may be deemed harmless unless there was any reasonable probability that a result more favorable to defendant would have been obtained without it. (*People v. Homick* (2012) 55 Cal.4th 816, 872.)

Here, assuming arguendo the admission of the statements was error, it was harmless. Our recitation of the facts *ante*, excludes any reference to the complained-of statements and, as so limited, admits to no reasonable probability the jury would have found him guilty of voluntary manslaughter rather than first degree murder. Defendant became desperate, angry, jealous, aggressive, and violent after his break up with the victim. Murillo herself noticed him following the victim. Defendant himself testified he followed the victim. In front of Murillo, defendant told the victim that if he ever caught her or even heard of her with another man, he would kill them both. Defendant told Hernandez he was going to kill the victim. He told her, "'If I can't have her, no one could have her.'" Defendant also told Hernandez he planned on killing Hernandez's sister-in-law, Michelle.

Defendant came uninvited into the victim's friend's apartment and refused to leave. He prohibited the victim from calling the police. After being shown the restraining order, he exclaimed no piece of paper was going to keep him away from her. Defendant obtained a gun in advance of the killing. He followed the victim to the swap meet, where he continued to pursue her. Defendant followed her uninvited back to her friend's apartment. Defendant thereafter followed the victim to LLUMC, with the gun in his pocket, where he waited for her to exit the emergency room and killed her in the parking lot. He thereafter fled to Mexico.

Thus, far from demonstrating defendant simply reacted spontaneously to the victim's statement of infidelity, the evidence, excluding the statements objected to, overwhelmingly established defendant harbored a long-term intent to kill the victim, obtained a weapon with which to do so, and waited until she was in an area with the least number of people around before carrying out that intent. There was no reasonable probability the jury would have found defendant guilty of anything other than first degree murder even without the complained-of statements.

Indeed, even had those statements been excluded, the content of some of those statements was properly, and without objection, admitted into evidence through other testimony. Hernandez testified she believed it was defendant's idea to break up in the first place. She testified she believed defendant wanted to get back together with the victim. Defendant testified he begged the victim to come back to him. Murillo testified that defendant once followed them in a vehicle. She testified he followed the victim to the swap meet and back to the victim's friend's apartment. She testified defendant said

he was going to follow the victim to LLUMC. Defendant himself testified he would follow the victim. He testified he attempted to get back together with the victim. Thus, the content of three of the four statements to which defendant objects were admitted regardless. The only one of the four statements that was not otherwise testified to, that the victim did not want the victim back, was circumstantially evident from her conduct both prior to and on the date of the killing. Any error in admitting the statements was harmless.

B. MISINTERPRETATION

1. *FACTS*

Defendant contends the court failed to conduct a proper investigation into an allegation made by an alternate juror that one of defendant's Spanish interpreters misinterpreted a word during defendant's testimony. He maintains the potential misinterpretation of the word "reject" for "respect" prejudicially undermined his defense that he killed the victim in the heat of passion rather than with premeditation and deliberation. We disagree.

After the People's closing argument, "one of the alternate jurors approached the bailiff and said that during [defendant's] testimony some of the—one part of his testimony had been mis[interpreted]. Specifically, the juror said that [defendant's] testimony was [interpreted] as that he had killed her because she didn't respect him[.]" "The alternate juror said that what [defendant] in fact said was that he had, in fact, killed her because she had rejected him." In order to investigate the matter, the court ordered a copy of the transcript. The court noted, "I will also say the interpreter that was present

that day is the [¶] . . . [¶] same interpreter who is present now. I conferred with her previously about this, just before the noon recess[.]"

The unnamed interpreter asserted, "I stand by my interpretation. First, because I am certified. Most important part of it, whatever I said is what I heard. Because I am very close to [defendant]. I am not only listening to him, I'm reading his lips. Because if you have noted—and I think everybody in this courtroom have [*sic*] noted—he's very much to the corner and crouched a little bit. And he's speaking very softly. In order for me to interpret, I'm . . . very close to his face, and I'm trying to make sure I am repeat[ing] exactly what he's saying. I am close there. If I heard whatever word it was, I stand by it, because that is the interpretation of his word."[7]

The court further observed, "I will say this for the record—this will not come through on the transcript. It's—it's important to note for the record that [defendant], when he testified, spoke in an exceedingly soft voice. I will say, on the face of it, I found it somewhat remarkable that a juror would be able to hear really anything [defendant] said. I could—now, frankly, he was facing away from me, but I'm sitting five feet away from him, I have—I will say I have a passing conversational knowledge of Spanish, I couldn't make out nearly [anything] of his testimony just because of the volume."

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[7] The minute orders for the days of defendant's testimony reflect the following regarding the Spanish interpreters: For December 5, 2011, "Certified Spanish interpreter Maria Greilach duly sworn or by oath on file (A.M)"; "Certified Spanish interpreter Olga Rios duly sworn or by oath on file (P.M)." For December 8, 2011, "Certified Spanish interpreter Maria Greilach duly sworn or by oath on file (A.M)"; "Certified Spanish interpreter Elizabeth Herrera duly sworn or by oath on file (P.M)." The interpreter with whom the court and court reporter conferred, and who defended her interpretation, was never identified by name in the record.

The court reporter then conferred with the interpreter. The court read what it then deemed a pertinent portion of defendant's testimony on direct:

"[Defense Counsel:] 'What was your attitude toward [the victim] at the time that she was about ready to go to the swap meet'?

[Defendant:] 'I wanted to go with them, but'—

[Defense Counsel:] 'Were you trying'—

[Defendant:] 'But she was rejecting me. She did not want me to be with her.'"

The court then read what appeared to be a pertinent part of defendant's testimony on cross-examination:

"[People:] 'Didn't you tell us just a few minutes ago that you were going to kill yourself so you went to go get the gun?'

[Defendant:] 'Yes, but I wasn't going to do it at that moment. I was going to kill myself in front of [the victim].'

[People:] 'Why?'

[Defendant:] 'Well, she was the one who did all this to me and didn't show me any respect. See and, really, it wasn't specifically about respect, but I wanted her to feel bad about my death.'

[People:] 'She didn't respect you, did she?'

[Defendant:] 'Well, that I don't know.'"

The court then opined, "[T]hat leaves me with . . . the impression . . . that they're different . . . statements at different times. That [defendant] referred to a lack of respect and referred to being rejected and backed away then from him being motivated [by a]

lack of respect. . . . But the sentence structure of those answers does not leave me with the impression that the wrong word could have been inserted. [¶] The answer seems coherent, at least, grammatically. So going through the thought exercise of substituting one word for the other, the answers make less sense if you just swap out respect for reject."

Defense counsel requested the court instruct the jury there was an issue regarding whether the interpreter had properly interpreted the two sections of testimony. The court responded, "it would require me to assume that the alternate juror, sitting probably 20 feet away, was able to more accurately [interpret] an incredibly soft-spoken witness more accurately than an interpreter sitting 20 inches away." It further noted, "I think it's just as possible that the juror misheard it as the interpreter. I would submit it's more likely, because [interpreting]—fluency in a language and [interpreting] that language are different—different states of affairs."

The court then brought the jury in and asked which of its members spoke Spanish. Two jurors responded. The court asked those two jurors to remain while it excused the rest of the jury. The court asked the non-complaining, seated juror whether he or she had, at any point, believed the interpreter incorrectly interpreted defendant's testimony. The juror responded that he or she had not.

The court then asked the complaining, alternate juror the same question. The alternate juror replied that during defendant's cross-examination, the interpreter misinterpreted one word, "rechazo," as "respect" rather than "rejection." Out of the

presence of the jurors, defense counsel observed, "I think the Court has done what it could do. I don't know what else we could do[.]"

The court decided it would read CALCRIM No. 121 requiring the jury to abide by the interpretation provided by the interpreter: "If the alternate juror says she cannot, I may have to excuse her, were she brought into the panel, because she would be unable to follow the Court's instruction." Nevertheless, the court ruled defense counsel could argue during his closing that defendant's testimony had been improperly interpreted. Defense counsel moved for a mistrial based on the purported misinterpretation; the court denied the motion.

The court read the jury a modified version of CALCRIM No. 121 as follows: "Some of the testimony given in this trial was given in Spanish and an interpreter [interpreted] that testimony for you at the time it was given. You must rely on the [interpretation] provided by the interpreter, even if you understand the language spoken by the witness. Do not [reinterpret] any testimony for other jurors. It's the testimony of the interpreter that needs to guide you in your deliberations."

Defense counsel argued to the jury there were problems with the interpretation of defendant's testimony, particularly the misinterpretation of the word "respect" for "reject." After the People's rebuttal argument, the court indicated it wanted to make a record that "the alternate juror told the bailiff that the interpreter who had mis[interpreted defendant] was the interpreter who was—she was present, and I will call it defending herself at the hearing yesterday. I will note that she was the interpreter when [defense counsel] was questioning [defendant] in the afternoon." Defense counsel noted, "So far

[defendant] hasn't . . . said that there was a mis[interpretation]." The alternate juror was never seated on the deliberating jury panel.

2. *ANALYSIS*

"The right to an interpreter has its underpinnings in a number of state and federal constitutional rights. These include a defendant's rights to due process, to confrontation, to effective assistance of counsel, and to be present at trial. [Citation.] The California Constitution provides that a criminal defendant who does not understand English 'has a right to an interpreter throughout the proceedings.' [Citation.] In addition, California Rules of Court, rule 2.890(b) . . . states that an interpreter must interpret accurately, without embellishing, omitting, or editing, and when 'interpreting for a witness, the interpreter must interpret everything that is said during the witness's testimony.' [Citation.]" (*People v. Romero* (2008) 44 Cal.4th 386, 410.)

"The question of an interpreter's competence is a factual one for the trial court. [Citations.] The ideal time to question the qualifications of an interpreter is before he is permitted to act [citation], although, if the competence of an interpreter becomes an issue after he commences his duties, it can be raised at that time. [Citation.] When a showing is made, at trial, that an interpreter may be biased or his skills deficient, one solution may be appointment of a 'check interpreter.' [Citation.]" (*People v. Aranda* (1986) 186 Cal.App.3d 230, 237.) "We review deferentially the trial court's resolution of any factual disputes. [Citation.]" (*People v. Sijas* (2005) 36 Cal.4th 291, 304.) We will uphold the trial court's resolution of a factual question if it is supported by substantial evidence. (*People v. Phillips* (2000) 22 Cal.4th 226, 236.)

Here, the court conducted an appropriate investigation into the allegation of misinterpretation. The court contacted the interpreter who had interpreted defendant's testimony on cross-examination. The interpreter stood by her interpretation, noting that she was certified, was seated much closer to defendant than the alternate juror, and not only listened to his words, but watched his mouth. The court observed defendant was soft spoken, that it could not make out everything defendant said from five feet away, that the interpreter was seated 20 inches away from defendant, and the alternate juror was seated 20 feet from defendant. It therefore appropriately concluded it was more likely the alternate juror misheard and misinterpreted the word than did the interpreter.

Moreover, the court had the court reporter and interpreter confer with one another. The court discussed the nature of the alleged misinterpretation with the complaining alternate juror. She indicated the interpreter had misinterpreted one word, "reject," for "respect." The court ordered a copy of the transcript. A review of those portions of defendant's cross-examination support the court's conclusion that replacement of the word "reject" for "respect" would not make grammatical sense. Furthermore, the prosecutor's question following defendant's use of the term "respect" would appear to be a rational take-up of defendant's testimony using that word. Finally, defense counsel noted the court had done all it could do and could not opine any further measures of investigation likely to bear fruit.

Additionally, defendant's contention that the court did not speak with the actual interpreter who had made the purported misinterpretation is not borne by the record. Although the interpreter who conferred with the court and court reporter and defended

her interpretation was never named in the record, the court twice affirmed that she was the interpreter who acted as defendant's interpreter at the time of the alleged misinterpretation; this was affirmed by the complaining, alternate juror. Thus, the court conducted an appropriate investigation such that substantial evidence supported the court's conclusion no misinterpretation had occurred. Regardless, even assuming error, it was harmless under any standard. As discussed above, the People adduced overwhelming evidence defendant planned to kill the victim. The court allowed defendant to argue to the jury there had been a misinterpretation even though it had ruled there had not been one. Contrary to defendant's argument, the purported misinterpretation of the single word "reject" for "respect" on one occasion would not have transformed the instant case from one of domestic violence to a so called "honor" or "respect killing" prejudicially inflaming the jury against defendant.

C. MOTION FOR MISTRIAL

Defendant contends the court abused its discretion by denying his motion for a mistrial based on the purported misinterpretation discussed above. We disagree.

After denying defendant's motion for mistrial, the court reasoned, "I see—there's no evidence that there's actually been a misinterpretation that would warrant a mistrial. To the contrary, my reading of the—my reading of the excerpt parts of the transcript suggest not that there was a mis[interpretation]. It actually looks right to me. It looks coherent. It looks consistent, internally, as far as the questions and answers go. So that's just my take."

“‘‘‘‘‘A mistrial should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions.’’’’ [Citation.] Accordingly, ‘[w]e review a trial court’s denial of a motion for mistrial for abuse of discretion.’ [Citation.]” (*People v. Lightsey* (2012) 54 Cal.4th 668, 718.)

As discussed above, having found no error, let alone incurable prejudice, we hold the court acted within its discretion in denying defendant’s motion for mistrial.

D. CUSTODY CREDITS

Defendant contends the court incorrectly awarded him credits based on a postcustody credit computation pursuant to former section 2993, subdivision (e), rather than presentence custody credits pursuant to former section 4019.[8] Thus, he maintains the court neglected to award him an additional 118 days of custody credit to which he was entitled. The People concede the issue. We agree.

[8] Because defendant’s crime was committed prior to the significant revisions in conduct credit computation made during the past 20 years, defendant is entitled to significantly more conduct credits than would be true of a defendant who had committed the same crimes today.

Former section 2933 applies to "worktime credits for *prison inmates* alone [and has] no relevance to *pretrial detainees*." (*People v. Davis* (1984) 154 Cal.App.3d 253, 255.) Section 4019 applies to presentence credit. (*People v. Hul* (2013) 213 Cal.App.4th 182, 186-187.) Section 4019, at the time of defendant's offense, provided that for every four-day period of confinement during which the confined worked and conducted himself satisfactorily, a term of six days would be deemed served. Former section 4019 provided that when a prisoner is committed to county jail he is entitled to conduct credits for performance of labor therein, and for compliance with the rules of that institution based on the time spent in actual custody from the date of his arrest to the time of sentencing. (*People v. Bravo* (1990) 219 Cal.App.3d 729, 735; *People v. Smith* (1989) 211 Cal.App.3d 523, 525-527.) "The correct amount of credit is calculated by dividing the number of days spent in custody by four and rounding down to the nearest whole number. This number is then multiplied by two and the total added to the original number of days spent in custody. [Citation.]" (*People v. Fry* (1993) 19 Cal.App.4th 1334, 1341.)

Here, the court awarded defendant "presentence" custody credits of 714 actual and 238 conduct, for a total of 952 days pursuant to former section 2933, subdivision (e). Computing defendant's custody credits pursuant to former section 4019, 714 actual days divided by four gives 178.5 days, which must be rounded down to 178. 178 multiplied by two equals 356. Thus, defendant should have been awarded 356 days of conduct credit for a total award of 1070 days. Therefore, the trial court is directed to award defendant the additional 118 days of custody credits.

C. CUMULATIVE ERROR

Defendant asserts that the cumulative effect of the trial court's errors resulted in a denial of due process. Having found no error other than the court's computation of conduct credits, we do not address defendant's contention there was prejudicial cumulative error. (*People v. Williams* (2013) 56 Cal.4th 165, 201.)

DISPOSITION

The trial court is directed to award defendant 1070 of total custody credits, consisting of 714 actual and 356 conduct days. The trial court is directed to prepare an amended abstract of judgment and minute order and forward certified copies to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.